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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

TODD JACKSON,

Defendant and Appellant.

D066000

(Super. Ct. No. SCD249837)

APPEAL from a judgment of the Superior Court of San Diego County, Albert T. Harutunian, III, Judge. Dismissed as moot.

Law Offices of Russell S. Babcock and Russell S. Babcock, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Charles C. Ragland, Scott C. Taylor, and Warren J. Williams, Deputy Attorneys General, for Plaintiff and Respondent.

In November 2013 a jury convicted Todd Jackson of *felony* possession of a controlled substance (cocaine base) pursuant to Health and Safety Code,<sup>1</sup> section 11350, subdivision (a) (hereafter section 11350(a)). Jackson admitted several prison prior convictions. The court sentenced Jackson to five years in prison, with two years to be served in the custody of the sheriff, and suspended execution of the remaining three years of the sentence. Jackson filed his notice of appeal in April 2014.

On November 4, 2014, while this appeal was pending, California voters approved the Safe Neighborhoods and Schools Act (Proposition 47). (Ballot Pamp., Gen. Elec. (Nov. 4, 2014) text of Prop. 47, § 1, p. 70.) It became effective the next day. (Cal. Const., art. II, § 10, subd. (a).) Among its provisions, Proposition 47 amended section 11350(a). (Ballot Pamp., *supra*, § 11, pp. 72-73.) Prior to the amendment, possession of a controlled substance in violation of section 11350(a) was punishable as a felony. (See former § 11350(a).) As a result of the amendment, the offense is now punishable as a misdemeanor unless the defendant "has one or more prior convictions" (§ 11350(a)) for an offense specified in Penal Code section 667, subdivision (e)(2)(C)(iv)—which lists serious and violent felonies that are sometimes referred to as "'super strike' offenses" (*People v. Lynall* (2015) 233 Cal.App.4th 1102, 1109)—or for an offense that requires the defendant to register as a sex offender under section 290, subdivision (c)." (§ 11350(a).)

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<sup>1</sup> All further statutory references are to the Health and Safety Code unless otherwise specified.

"Proposition 47 also created a new resentencing provision—[Penal Code] section 1170.18. Under [Penal Code] section 1170.18, a person 'currently serving' a felony sentence for an offense that is now a misdemeanor under Proposition 47, may petition to recall that sentence and request resentencing. ([Pen. Code] § 1170.18, subd. (a).) A person who satisfies the statutory criteria shall have his or her sentence recalled and be 'resentenced to a misdemeanor ... unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety.' (*Id.*, subd. (b).)" (*People v. Lynall, supra*, 233 Cal.App.4th at p. 1109.)

Jackson contends that he is entitled to automatic retroactive resentencing as a misdemeanant under Proposition 47 because the judgment in this case is not final. We dismiss his appeal as moot.

## DISCUSSION

On November 6, 2014, following the electorate's approval of Proposition 47, Jackson filed a petition for recall of sentence in the superior court, requesting reduction of his felony drug conviction to a misdemeanor pursuant to Penal Code section 1170.18. The court granted Jackson's request and in January 2015 Jackson was resentenced to time served as a misdemeanant.

In light of Jackson's successful petition and subsequent resentencing, we requested supplemental letter briefing by the parties on the issue of whether this appeal is moot. The Attorney General responded, arguing that Jackson's appeal is moot because there is no longer a justiciable controversy at issue and it is impossible for this court to grant him any effectual relief. Jackson declined to respond to our request.

We conclude that Jackson's appeal should be dismissed as moot because he has received the relief he sought in this appeal. "It is settled that the duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect that matter in issue in the case before it. It necessarily follows that when, pending an appeal from the judgment of a lower court, and without any fault of the defendant, an event occurs which renders it impossible for this court, if it should ever decide the case in favor of plaintiff, to grant him any effectual relief whatever, the court will not proceed to a formal judgment, but will dismiss the appeal." (*In re Sodersten* (2007) 146 Cal.App.4th 1163, 1217, quoting *Paul v. Milk Depots, Inc.* (1964) 62 Cal.2d 129, 132.)

Here, when the court granted Jackson's petition and resentenced him as a misdemeanor, his appeal became moot because there was no longer any justiciable issue requiring resolution, nor any effectual relief we could grant him. (*In re Sodersten, supra*, 146 Cal.App.4th at p. 1217.)

#### DISPOSITION

The appeal is dismissed as moot.

NARES, Acting P. J.

WE CONCUR:

HALLER, J.

McDONALD, J.